APPENDIX A

First Amendment to the Constitution of the United States of America:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Sec. 1 of Fourteenth Amendment to the Constitution of the United States of America:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX B

OPINIONS AND JUDGMENTS BELOW

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-277-62

WALTER C. WRIGHT, JR.,
Plaintiff-Respondent,

vs.

PRESS PUBLISHING COMPANY,
et als.,
Defendants-Appellants.

Argued June 10, 1963—Decided June 27, 1963.
Before Judges Sullivan, Lewis and Labrecque.
Mr. Harry Green argued the cause for appellants (*Messrs. Arkus & Cooper*, attorneys).
Mr. Joel A. Mott, Jr., argued the cause for respondent (*Mr. Walter C. Wright, Jr.*, attorney *pro se*).

PER CURIAM

Defendants, pursuant to leave granted by this court, appeal from the denial of their motion for summary judgment. The suit, sounding in libel, grows out of the publication of certain newspaper articles and an editorial by defendant Press Publishing Company. At the time of the alleged libel plaintiff was mayor of Cape May City in Cape May County, New Jersey.

On or about January 31, 1963, defendant Michael F. Comerford, a reporter for the Atlantic City Press, a newspaper published by defendant Press Publishing Company, had a telephone conversation with Mayor Wright. The substance of the conversation is not in dispute. In it

Mayor Wright told the reporter that "We have been receiving some bad publicity lately and the councilmen and I have decided not to say anything until we work out some efficient and orderly means to disperse press releases. * * * we are not going to answer any questions by reporters until we work out some system. * * * we are not issuing any statements until we can work out some system."

Following the conversation, the Atlantic City Press printed a series of articles dealing with Mayor Wright's statements to the reporter. Excerpts from the articles are as follows:

"WRIGHT ORDERS BLACKOUT OF CAPE MAY CITY NEWS"

"Gag Action Follows Displeasure With Criticism of Sales Tax."

"CAPE CITY NEWS BLACKOUT BRINGS VARIED REACTION"

"Individuals Feel Freedom Curb; Organization Heads Approve."

"* * * the recently instituted news blackout decreed by Mayor Walter C. Wright."

Thereafter the newspaper published an editorial in which the following was stated.

"THE CAPE MAY NEWS BLACKOUT

MAYOR WALTER WRIGHT of Cape May is reported to have clamped down a news blackout on that South Jersey coast resort.

We have grown accustomed to hearing of such things from Communist dominated and totalitarian-ruled areas. But we are dismayed and shocked, to say the least, to find them going on in our own midst.

The mayor was quoted as saying that he took the action after the appearance of what he considered an unfavorable headline in a Philadelphia newspaper last Sunday.

Mayor Wright may know a great deal about administering municipal affairs. But he is showing precious little knowledge of, or consideration for, the basic constitutional guarantee of freedom of the press.

Nor is he showing any awareness of right-to-know legislation in this State, setting forth the policy that the public business is the public's business, and that citizens have a right to attend public meetings and have ready access to public records.

By what right has the mayor assumed censorship over the news and the power to suppress that which offends his personal or official sensitivities?

Or has Cape May seceded from the State and the Union?"

Following the editorial, defendant newspaper published another article referring to Mayor Wright's "order of a news blackout for his city", and commenting that "his action conflicts with the 'basic constitutional guarantee of freedom of the press' and with the 'right-to-know' laws in this state."

Defendants contend that the words complained of constituted fair comment and were not libelous at all since the allegations of fact in said publications, upon which the criticism of plaintiff's acts were based, were undisputedly true. Defendants also assert that the publications were privileged communications published on privileged occasions.

We find defendants' motion to have been properly denied. The applicable rule is stated in *Leers* v. *Green*, 24 *N. J.* 239, 254-255 (1957) as follows:

"In a word, 'fair comment' (a) must be based on facts truly stated, and (b) must not contain imputations of corrupt or dishonourable motives on the person whose conduct or work is criticised, save in so far as such imputations are warranted by the facts,

and (c) must be the honest expression of the writer's real opinion; and if the comment complies with these conditions, it is fair comment, however incorrect be the views expressed by the critic, or however exaggerated or even prejudiced be the language of the criticism; the 'limits of criticism are exceedingly wide.' *Gatley, Libel and Slander, sections* 344, 354. But criticism 'cannot be used as a cloak for mere invective, nor for personal imputations not arising out of the subject-matter or not based on fact'; 'invective is not criticism.' *McQuire* v. *Western Morning News,* [1903] 2 *K. B.* 100, 108, Collins, M. R. See, also, *Dressler* v. *Mayer,* 22 *N. J. Super.* 129 (*App. Div.* 1952), Eastwood, J. A. D.

And, as has been said, it is for the judge to decide whether a communication is capable of a defamatory meaning and also, it may now be added, whether the matter commented on is one of public concern; and while it is for the jury to decide, under appropriate instructions, whether the words are allegations of fact or expressions of opinion, and, if expression of opinion, whether such expressions of opinion are fair comment or not, in every case it is first of all the duty of the judge to determine whether there is any evidence of unfairness to go to the jury."

The trial judge declined to hold that, as a matter of law, the publications constituted fair comment or were privileged. We agree.

We find no merit in the other points raised by appellants. Affirmed.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CAPE MAY COUNTY

WALTER C. WRIGHT, JR.
Plaintiff,
vs.
PRESS PUBLISHING CO. et als.,
Defendants.
Civil Action

JUDGMENT

The above entitled action having been tried before the Honorable George B. Francis, with a jury, and the Court having granted motions for judgment of dismissal, dismissed as to William Green as to counts 1, 2 and 3, dismissed as to William Thompson as to counts 3 and 4, dismissed as to Michael Comerford as to counts 3 and 4, dismissed as William McMahon as to counts 3 and 4, dismissed as to John Adams as to all counts, with costs; and the jury having returned a verdict of No Cause for Action, as to Press Publishing Co., as to counts 1, 2, 3 and 4, as to Stanley Fink as to counts 1, 2, 3 and 4, as to William Green as to count 4, as to William Thompson as to counts 1 and 2, as to Michael Comerford as to counts 1 and 2, as to William McMahon as to counts 1 and 2,

It is, on this 31st day of March, 1964,

ORDERED, that a judgment of dismissal be entered in favor of the defendant, William Green, on counts 1, 2 and 3, and in favor of the defendant, William H. Thompson, on counts 3 and 4, and in favor of the defendant, Michael F. Comerford, on counts 3 and 4, and in favor of the defendant, William McMahon, on counts 3 and 4, and in favor of the defendant, John S. Adams, on all counts, and against the plaintiff, Walter C. Wright, Jr.; and a judgment of No Cause for Action be entered in favor of the defendant, Press Publishing Co., on counts, 1, 2, 3 and

4, in favor of the defendant, Stanley Fink, on counts 1, 2, 3 and 4, and in favor of defendant, William Green, on count 4, and in favor of the defendant, William H. Thompson, on counts 1 and 2, and in favor of the defendant, Michael F. Comerford, on counts 1 and 2, and in favor of the defendant, William McMahon, on counts 1 and 2, and against the plaintiff, Walter C. Wright, Jr., With Costs.

I. GRANT SCOTT /s/
Clerk, Superior Court of New Jersey

Judgment entered this
31st day of March, 1964.

I. Grant Scott /s/
Clerk, Superior Court of New Jersey

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

ORDER DENYING MOTION

This matter coming on to be heard in the presence of Walter C. Wright, Jr., plaintiff-appellant, Pro Se, and HARRY GREEN, of Counsel, and SAUL W. ARKUS of ARKUS AND COOPER, attorneys for defendants-respondents, on motion of plaintiff-appellant for an order permitting the plaintiff-appellant to print certain items in the Appendix on this Appeal, as set forth in Notice of Motion dated November 28, 1964; and the Court having examined the motion papers and briefs;

It is, on this 7th day of December, 1964, on motion of Arkus and Cooper, attorneys for defendants-respondents, ORDERED that motion of plaintiff-appellant is denied.

FOR THE COURT:
EDWARD GAULKIN /s/
PJAD

Consented To As To Form only

WALTER C. WRIGHT, JR. /a/
Plaintiff-Appellant, Pro Se

SUPREME COURT OF NEW JERSEY

ORDER DENYING MOTION FOR LEAVE TO APPEAL

This matter having been duly presented to the Court, it is Ordered that the motion for leave to appeal is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 7th day of January, 1965.

JOHN H. GILDEA /s/
Clerk

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-879-63

WALTER C. WRIGHT, JR.,
Plaintiff-Appellant,

v.

PRESS PUBLISHING COMPANY, *et als.*,

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

Defendants-Respondents.

Argued March 28, 1966—Decided July 13, 1966
Before Judges Gaulkin, Labrecque and Brown.
On appeal from Superior Court, Law Division, Cape May County.
Mr. Walter C. Wright, Jr., plaintiff-appellant, argued the cause *pro se*.
Mr. Harry Green argued the cause for defendants-respondents (*Messrs. Arkus & Cooper*, attorneys; *Mr. Green*, on the brief).

PER CURIAM

Plaintiff appeals from a judgment in favor of defendants and from denial of his motion for a new trial. The jury determined that publication of the alleged libelous matter was without actual malice and such finding finds adequate support in the record. *Kulbacki* v. *Sobchinsky*, 38 *N. J.* 435 (1962). We accordingly affirm. *New York Times Co.* v. *Sullivan*, 376 *U. S.* 254, 84 *S. Ct.* 710, 11 *L. ed. 2d* 686, 95 *A. L. R. 2d* 1412 (1964).

No costs.

APPENDIX

SUPREME COURT OF NEW JERSEY
C-31 September Term 1966

WALTER C. WRIGHT, JR.,
Plaintiff-Petitioner,

vs.

PRESS PUBLISHING COMPANY, et al.,
Defendants-Respondents.

On Petition for Certification

ORDER DENYING PETITION

TO APPELLATE DIVISION, SUPERIOR COURT:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 20th day of September, 1966.

JOHN H. GILDEA, Clerk
Clerk of the Supreme Court

A TRUE COPY
JOHN H. GILDEA
Clerk

SUPREME COURT OF NEW JERSEY

M-86 September Term 1966

WALTER C. WRIGHT, JR.,
Plaintiff-Appellant,

vs.

PRESS PUBLISHING COMPANY,
Defendant-Respondent.

ON

MOTION TO DISMISS APPEAL.

This matter having been duly presented to the Court, it is Ordered that the motion to dismiss appeal is granted.

WITNESS, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this first day of November, 1966.

JOHN H. GILDEA, Clerk

A TRUE COPY
JOHN H. GILDEA
Clerk